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FILED

JAN 19 2010

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

Docket No. 2009-019
Cause No. C/025/0005

DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC,

Intervenor-Respondent..

**PETITIONERS' MEMORANDUM IN SUPPORT OF THEIR MOTION
FOR DESIGNATION OF A HEARING EXAMINER**

Pursuant to UT ADC R641-113-100, Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah Wilderness Alliance ("SUWA"), Natural Resources Defense Council ("NRDC"), and National Park Conservation Association ("NPCA")(collectively, "Petitioners") have moved this

Board to designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusions of law to the Board. Briefly and simply put, the better method of conducting pre-hearing proceedings and an evidentiary hearing of a complex challenge to approval of a coal mining permit is to designate a single hearing official rather than entertain all proceedings before a seven member board. A single hearing examiner would be in better position than this Board to decide contested matters of procedure and objections to presentation of evidence promptly, and this difference alone may reasonably be expected to abbreviate this proceeding by several days. Additionally, designating a member of the Board's staff as hearing examiner would better enable the parties to present evidence in this matter over a continuous number of days, thus avoiding the taking of evidence in two or more sessions separated by days or weeks, as may become necessary to accommodate the needs of Board members to attend to other matters.

Petitioners acknowledge that the designation of a hearing examiner is a matter within the sound discretion of the Board, from the initial decision on whether to make such a designation at all, to the choice of a person to serve, to the scope of authority any hearing examiner would have. Petitioners express no preference with respect to such matters other than the threshold decision to designate someone as hearing examiner.

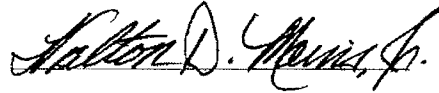
So long as their right to judicial review is preserved, Petitioners are prepared to stipulate with the other parties to this proceeding that no party shall file a motion for *de novo* hearing before the Board following any evidentiary hearing before a hearing examiner. Petitioners understand that the Board would either accept the hearing examiner's recommended rulings, modify them, make its own decision on evidence adduced at hearing, or remand the matter to the hearing examiner for further proceedings.

WHEREFORE, for reasons set forth above, Petitioners request that the Board enter an order designating a hearing examiner in this proceeding.

Dated: January 15, 2010

Respectfully submitted,

By:



Attorneys for Utah Chapter of the
Sierra Club, *et al.*

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2010, I served a true and correct copy of
PETITIONERS' MOTION FOR DESIGNATION OF A HEARING EXAMINER on each of
the following persons via electronic mail:

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